

COMMISSION DIRECTIVE

ADMINISTRATIVE MATTERS	<input type="checkbox"/>	DATE	<u>July 12, 2006</u>
MOTOR CARRIER MATTERS	<input type="checkbox"/>	DOCKET NO.	<u>2006-92-WS</u>
UTILITIES MATTERS	<input checked="" type="checkbox"/>		

SUBJECT:

DOCKET NO. 2006-92-WS - Application of Carolina Water Service, Incorporated (CWS) for Adjustment of Rates and Charges for the Provision of Water and Sewer Service – Discuss with the Commission a Request for Reconsideration of the Action Taken at its June 27, 2006 Meeting Requesting that the Applicant Provide Certain Information to the Commission and to Clarify the Extent of the Relief Requested in the Motion Filed by John M. S. Hoefer, Esquire. The Office of Regulatory Staff Concurs with the Legal Arguments Submitted in Mr. Hoefer's Letter.

COMMISSION ACTION:

Mr. Chairman, I move to deny Carolina Water Service's request that the Commission reconsider its request for information of June 27, 2006. I believe that it was appropriate for the Commission to ask for additional information regarding the finances and rates of the Company's individual systems. Also, Carolina Water Service's request for reconsideration is premised on a fundamental misunderstanding of the Commission's request. I would like to address each of the company's arguments.

Carolina Water Service has confused the Commission's request that it supplement its application for a rate increase with a discovery request and most of its arguments are based on this incorrect assumption. The Commission did not issue a discovery request to Carolina Water Service. It merely requested that the Company supplement its application. By making this request, the Commission signaled early on in the case that it had concerns about the sufficiency of the information presented in the Company's application, and it invited the Carolina Water Service to address those concerns. Carolina Water Service is free to respond – or not respond – as it sees fit.

A discovery request, on the other hand, is a request for information issued by a party pursuant to Commission rules, which must be answered absent valid objection. The Commission is not a party, and did not issue such a request. Again, by alerting the parties of its concerns early on in the process, the Commission sought to inform the parties of its concerns. Carolina Water Service is free to ignore the Commission's request if it desires to do so, and ultimately the Commission will have to determine whether the company has presented sufficient evidence to carry its burden of showing that its requested rates are just and reasonable.

CWS argues, without referencing any direct statutory authority that the Commission may not participate in rate cases as a party of record. Because the Commission has not presented a discovery request, or a data request, pursuant to Commission Regulation 103-853, this argument is misplaced. Neither the Commission nor its staff is attempting to participate in this case as a party of record. Instead, the Commission is carrying out its statutory duty to consider applications for rate increases from regulated utilities.

For the same reason, the parties' argument that the Commission has violated various provisions of Canon 3 of the Code of Judicial Conduct is without merit. To the contrary, the Commission's action is consistent with its obligations under Canon 3 which require it to diligently carry out its duties.

Carolina Water Service's argument that the Commission has violated Canon 3 of the Code of Judicial Conduct by independently investigating the case is also without merit. The Commission has not

conducted any independent investigation in this case. Instead, it has requested that Carolina Water Service itself provide the requested information by supplementing its application.

Moreover, Carolina Water Service's suggestion that the Commission's request was an improper response to criticism of the company at public hearings is unwarranted. The Commission has the authority, and the obligation, to determine whether rates are just and reasonable. The Commission is not prohibited from requesting pertinent information which is also of interest to a company's customers, or from taking notice of the customers' concerns when they are voiced under oath and on the record in one of the Commission's public hearings.

Carolina Water Service next argues that it was not given an opportunity to be heard regarding the Commission's motion and request. In fact, Carolina Water Service and the public were given lawful notice that the Commission would take up the case and its request for a new hearing schedule at its meeting of June 27. Neither the Commission's rules, nor the law, require the Commission to give Carolina Water Service or any of the parties advance notice of the text or substance of a Commissioner's motion. In any case, both Carolina Water Service and the Office of Regulatory Staff have now had the opportunity to be heard, as evidenced by the Commission's present consideration of their arguments.

Carolina Water Service argues that it does not have the information requested by the Commission readily available and that it cannot be ordered to compile it. Again, the Commission has not *ordered* Carolina Water Service to compile any information. Carolina Water Service is free to meet its burden of proof and offer persuasive evidence as it sees fit.

Finally, Carolina Water Service also argues that it should not provide any additional information in this matter by amending its application. The Commission did not order Carolina Water Service to amend its application, an act which arguably would trigger new statutory deadlines for this case. Instead, it asked the Company to supplement its application with additional information for the test year in question.

In conclusion, Mr. Chairman I would observe that neither of the parties has argued that the information requested by the Commission is not relevant to this case. I believe the Commission has the right to ask the Company to supplement the application with this information, and therefore I move to deny Carolina Water Service's request for reconsideration.

Mr. Chairman that concludes my motion.

PRESIDING	<u>Mitchell</u>					
	MOTION	YES	NO	OTHER	APPROVED	<input type="checkbox"/>
					APPROVED STC 30 DAYS	<input type="checkbox"/>
CLYBURN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		ACCEPTED FOR FILING	<input type="checkbox"/>
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		DENIED	<input type="checkbox"/>
HAMILTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		AMENDED	<input type="checkbox"/>
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		TRANSFERRED	<input type="checkbox"/>
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		SUSPENDED	<input type="checkbox"/>
MOSELEY	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		CANCELED	<input type="checkbox"/>
WRIGHT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		SET FOR HEARING	<input type="checkbox"/>
					ADVISED	<input type="checkbox"/>
Session:	Regular				CARRIED OVER	<input type="checkbox"/>
Time of Session	<u>2:30 PM</u>				RECORDED BY	<u>JBS</u>